

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FAMILY VISION MINISTRIES, INC.)	File No. EB-01-IH-0629
)	Facility #79130
Licensee of Noncommercial Educational Station)	
KAYH(FM))	
Fayetteville, Arkansas)	

MEMORANDUM OPINION AND ORDER

Adopted: January 29, 2003

Released: January 31, 2003

By the Commission:

1. In this *Memorandum Opinion and Order*, we deny an application for review filed June 12, 2002, by KERM, Inc. ("KERM").¹ KERM seeks review of the May 15, 2002, letter ruling of the Chief, Investigations and Hearings Division, Enforcement Bureau, which found that Family Vision Ministries, Inc. ("Family Vision") licensee of noncommercial station KAYH(FM), Fayetteville, Arkansas, broadcast a single advertisement in violation of Section 399B of the Communications Act ("Act"), 47 U.S.C. § 399B, and Section 73.503(d) of the Commission's rules, 47 C.F.R. § 73.503(d), but refrained from imposing any sanction. KERM, which provided transcript and recorded evidence and argument challenging numerous KAYH(FM) underwriting announcements, now argues that the staff's ruling ignored additional instances of the licensee's underwriting rule violations, and that the ruling thus failed to impose the appropriate sanction in redress. Family Vision filed a pleading opposing the application for review,² and KERM a reply thereto.

2. We reject KERM's arguments. The staff's May 15, 2002, letter ruling properly concluded that station KAYH(FM)'s broadcast of the Arvest Farmer's and Merchant's Bank underwriting announcement represented "an isolated occurrence" of licensee noncompliance with the pertinent statute and Commission rules, and that the station's broadcast of this announcement did not warrant any sanction. As noted in the staff's ruling, the 11 additional announcements complained about by KERM are permissible under *Xavier University*, 5 FCC Rcd 4920 (1990); *Public Notice, In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations* (April 11, 1986), republished, 7 FCC Rcd 827 (1992) ("*Enhanced Underwriting and Donor Acknowledgment Statement*"),³ and in keeping with

¹ KERM is licensee of Stations KURM(AM), Rogers, Arkansas; KARV(AM), Russellville, Arkansas; KARV-FM, Ola, Arkansas; and KLTK(AM) and KURM-FM, Southwest City, Missouri.

² On June 25, 2002, Family Vision requested an extension of time until July 12, 2002, to file its opposition pleading, arguing that newly hired counsel needed additional time to prepare its filing. The Commission's policy is not to grant extensions of time routinely. See 47 C.F.R. § 1.46(a). In this case, however, we find that the public interest is served by permitting the late-filing so that we may have a better understanding of the record.

³ In *Xavier*, the Commission acknowledged that it can at times be difficult to distinguish between language that identifies versus that which promotes, and that it expects only that licensees exercise "reasonable good

Commission policy that underwriting announcements may identify, but not promote, their for-profit sponsors.⁴ In this regard, the additional announcements briefly describe their underwriter's products or services in value-neutral terms, and list business addresses and telephone numbers, consistent with the identification-only purpose of underwriting announcements. *See Public Notice*. Significantly, the announcements do not provide prohibited price information, attempt to induce business patronage, call listeners to action, or seek to distinguish or compare their products or services in a favorable manner to those of their competitors. Accordingly, we conclude that their broadcast was within the licensee's reasonable good faith discretion under *Xavier*.⁵ Thus, their broadcast was permissible.⁶

3. Furthermore, in view of the single non-compliant announcement at issue in this case, KERM does not adequately explain why the imposition of a formal sanction would be required to ensure KAYH(FM)'s prospective rule compliance. In this regard, while complaining parties may question a licensee's conduct and so invite Commission scrutiny and investigative efforts, the agency itself has broad discretion in determining whether to impose sanctions in given cases. *See Lorain Journal Co. v. FCC*, 351 F.2d 824, 830-31 (D.C. Cir. 1965), *cert. denied sub nom. WWIZ, Inc. v. FCC*, 383 U.S. 967 (1966), *citing FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *see also In re Black Media Works, Inc.*, 16 FCC Rcd 3374 (EB 2001). In this connection, after reviewing KERM's application for review, the responsive pleadings, and the underlying record, we find no reason to overturn the Bureau's prior decision and conclude that the decision not to impose a sanction was correct.⁷

faith judgment" in this area.

⁴ The additional announcements cited by KERM were for the Armadillo Grill; the Color Shop; Spring Street Grill and Catering; the Maxillo Facial Surgery Center; Northwest Tires; Pizza in Springdale; First National Bank of Springdale; Posa's House of Pasta; Williams' Tractor; and Signature Cleaners.

⁵ First, we find that the Armadillo Grill announcement's mention of "daily lunch specials" is acceptable because it appears to refer to the variety of the restaurant's luncheon offerings and, thus, does not convey prohibited price information. Similarly, we find that the description of the Color Shop's offering of "professional equipment and supplies" is permissible because it refers to the general type of merchandise offered and is not specifically promotional of the underwriter. The Spring Street Grill and Catering announcement's mention that it offers "home style food" and "bakes [its] pies daily" appears to identify its products in a general, categorical manner, as does the Williams Tractor announcement's mention that its Magnum 325 ATV possesses "an intelligent four-wheel drive system." *See Xavier*; *cf. Board of Education of New York (WNYE-TV)*, 7 FCC Rcd 6864 (MMB 1992). Similarly, we find that the Northwest Tires announcement identifies its Toyo radial tire as being "designed for pickups, vans and sport utility vehicles" in a value-neutral manner without specifically comparing it to other makes. *Cf. Kosciusko Educational Broadcasting Foundation (WJTA(FM))*, 5 FCC Rcd 7106 (MMB 1990). In that vein, we find that the Posa's House of Pasta announcement acceptably identifies the restaurant as offering "dining in or carry-out dinners with catering and gift baskets" in a value-neutral manner that refrains from urging patronage. *Cf. id.* Finally, we note the Maxillo Facial Surgery Center announcement observes generally that surgery "never has to be unpleasant" and does not appear to distinguish the underwriter's medical skills from those of other oral surgeons. *Cf. id.* Thus, we find that it is acceptable.

⁶ KERM ignores that the precedent and policy pronouncements on which it relies were modified by both the later *Enhanced Underwriting and Donor Acknowledgment Statement* and *Xavier* case to afford licensees greater discretion in formulating compliant underwriting announcements.

⁷ We note that, in its responsive pleading, Family Vision does not challenge our finding respecting the Arvest Farmer's and Merchant's Bank underwriting announcement.

4. Accordingly, IT IS ORDERED, pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the application for review filed June 12, 2002, by KERM, Inc. IS DENIED; that the staff's May 15, 2002, decision IS AFFIRMED; and that Family Vision's opposition to application for review IS GRANTED to the extent indicated herein.

5. IT IS FURTHER ORDERED, that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested, to KERM, Inc., c/o Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, Virginia, 22201, and to Family Vision Ministries, Inc., c/o Vincent J. Curtis, Esq., Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia, 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary